

MET1.0025



COPY OF PAPERS
ORIGINALLY FILED

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bentolila, et al.

For: SYSTEM, METHOD, AND SOFTWARE
APPLICATION FOR TARGETED
ADVERTISING VIA BEHAVIORAL
MODEL CLUSTERING, AND
PREFERENCE PROGRAMMING BASED
ON BEHAVIORAL MODEL CLUSTER

Application No.: 10/043,714

Filed: January 9, 2002

July 15, 2002

Los Angeles, California 90067

DECLARATION OF KENNETH L. SHERMAN AND
STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF
NON-SIGNING INVENTOR UNDER 37 CFR 1.47(a)

Assistant Commissioner for Patents
Washington, D.C. 20231

I, Kenneth L. Sherman, Esq. hereby declare that the following is true and correct, and if called upon could and would testify to the following:

1. I am an attorney licensed to practice law, in good standing and residing in the State of California.

2. I am the patent attorney for Metabyte Networks, Inc. (hereinafter "MNI"), the owner by agreement of all rights, title and interest to the above-referenced United States Patent Application.

3. MNI is a Delaware Corporation, licensed to do business in the State of California and having its principal place of business at 39350 Civic Center Drive, Suite 100, Fremont, California 94538.

4. On behalf of MNI, I communicated with Mr. Ariel (Isaac) Bentolila, an inventor in this application and I have been unsuccessful in obtaining his signature on the Declaration for this United States Patent Application.

5. Mr. Bentolila was an employee of MNI when he participated in the invention claimed by this U.S. patent application, but is not longer an employee of MNI.

6. While an employee of MNI, Mr. Bentolila had a duty to assign all rights, title and interest in his inventions to MNI. A true copy of Mr. Bentolila's "Employee Invention Assignment and Confidentiality Agreement with Metabyte Networks, Inc. is attached hereto as Exhibit A.

7. On April 1, 2002, I sent a letter to Mr. Bentolila regarding his request to obtain a further copy of the original United States Patent Application filed on behalf of Metabyte. This letter also included an Assignment and a Combined Declaration and Power of Attorney to be executed and sent to our office. This letter was sent via UPS on April 1, 2002. A true copy of the letter, UPS waybill and invoice is attached hereto as Exhibit B.

8. The letter was sent via UPS to Mr. Bentolila at his last known and believed current address:

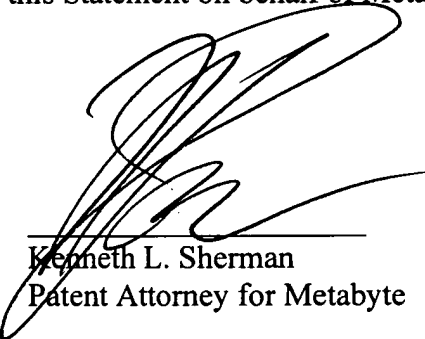
Isaac (Ariel) Bentolila
517 36th Avenue, Apt. 201
San Francisco, California 94121

9. The other joint inventors have executed a Declaration complying with 37 CFR 1.63 and 37 CFR 1.47(a). Therefore, Applicant hereby requests that the Patent Office accept the filing of a partially executed Declaration and Power of Attorney under 37 CFR 1.47(a) with no further delay in the examination and issuance of this patent application.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and submit this Statement on behalf of Metabyte Networks, Inc.

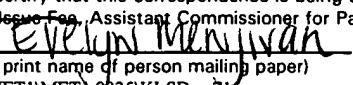
Dated:

7/15/02


Kenneth L. Sherman
Patent Attorney for Metabyte

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service first class mail in an envelope addressed to the: ~~Box Issue Fee~~, Assistant Commissioner for Patents, Washington, D.C. 20231 on 7/15/02.


(Type or print name of person mailing paper)
G:\KLS\MET1\MET1.0025\KLSDec.715


(Signature of person mailing paper)

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JUL 31 2002

OFFICE OF PETITIONS

COPY



METABYTE NETWORKS, INC.

COPY OF PAPERS
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EMPLOYEE INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT

In consideration of, and as a condition of my employment with Metabyte Networks, Inc., a California corporation (the "**Company**"), I hereby represent to, and agree with the Company as follows:

1. **Purpose of Agreement.** Employee understands that the Company is engaged in a continuous program of research, development, production and marketing in connection with its business and that it is critical for the Company to preserve and protect its Proprietary Information (as defined below), its rights in Inventions and in all related intellectual property rights. Accordingly, I am entering into this Agreement as a condition of my employment with the Company, whether or not I am expected to create inventions of value for the Company.
2. **Employment at Will.** Employee understands and agrees that this Agreement does not constitute a contract of employment or obligate Company to employ Employee for any stated or fixed period of time. Employee understands and agrees that Employee's employment with Company is at will, and may be terminated by Company or Employee at any time and for any reason or for no reason, with or without cause.
3. **Disclosure of Inventions.** I will promptly disclose in confidence to the Company all inventions, improvements, designs, original works of authorship, formulas, processes, compositions of matter, computer software programs, databases, mask works and trade secrets ("Inventions") that I make or conceive or first reduce to practice or create, either alone or jointly with others, during the period of my employment, whether or not in the course of my employment, and whether or not such Inventions are patentable, copyrightable or protectible as trade secrets.
4. **Reimbursement.**
 - a. Under this Agreement, Employee will be reimbursed for any expenses incurred provided that such reimbursement is authorized under Company's prevailing policies.
 - b. Employee may participate in Company's employee benefit programs to the extent that the same are open to other employees in similar Company positions. Company reserves the right to delete, modify, or otherwise amend any of such programs and eligibility requirements for the same in its sole discretion.
 - c. Authority. Employee understands and agrees that he or she has no authority, express or implied, to enter into any obligation or responsibility on Company's behalf without, in each instance, obtaining the prior written authority of an officer of Company to do so.
5. **Work for Hire: Assignment of Inventions.** I acknowledge and agree that any copyrightable works prepared by me within the scope of my employment are "works for hire" under the Copyright Act and that the Company will be considered the author and owner of such copyrightable works. I agree that all Inventions that (a) are developed using equipment, supplies, facilities or trade secrets of the Company, (b) result from work performed by me for the Company, or (c) relate to the Company's business or current or anticipated research and development, will be the sole and exclusive property of the Company and are hereby irrevocably assigned by me to the Company.

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JUL 31 2002

6. **Labor Code 2870 Notice.** I have been notified and understand that the provisions of paragraphs 3 and 5 of this Agreement do not apply to any Invention that qualifies fully under the provisions of Section 2870 of the California Labor Code, which states as follows:

ANY PROVISION IN AN EMPLOYMENT AGREEMENT WHICH PROVIDES THAT AN EMPLOYEE SHALL ASSIGN, OR OFFER TO ASSIGN, ANY OF HIS OR HER RIGHTS IN AN INVENTION TO HIS OR HER EMPLOYER SHALL NOT APPLY TO AN INVENTION THAT THE EMPLOYEE DEVELOPED ENTIRELY ON HIS OR HER OWN TIME WITHOUT USING THE EMPLOYER'S EQUIPMENT, SUPPLIES, FACILITIES, OR TRADE SECRET INFORMATION EXCEPT FOR THOSE INVENTIONS THAT EITHER: (1) RELATE AT THE TIME OF CONCEPTION OR REDUCTION TO PRACTICE OF THE INVENTION TO THE EMPLOYER'S BUSINESS, OR ACTUALLY OR DEMONSTRABLY ANTICIPATED RESEARCH OR DEVELOPMENT OF THE EMPLOYER, OR (2) RESULT FROM ANY WORK PERFORMED BY THE EMPLOYEE FOR THE EMPLOYER. TO THE EXTENT A PROVISION IN AN EMPLOYMENT AGREEMENT PURPORTS TO REQUIRE AN EMPLOYEE TO ASSIGN AN INVENTION OTHERWISE EXCLUDED FROM BEING REQUIRED TO BE ASSIGNED UNDER CALIFORNIA LABOR CODE SECTION 2870(a), THE PROVISION IS AGAINST THE PUBLIC POLICY OF THIS STATE AND IS UNENFORCEABLE.

7. **Assignment of Other Rights.** In addition to the foregoing assignment of Inventions to the Company, I hereby irrevocably transfer and assign to the Company: (a) all worldwide patents, patent applications, copyrights, mask works, trade secrets and other intellectual property rights in any Invention; and (b) any and all "Moral Rights" (as defined below) that I may have in or with respect to any Invention. I also hereby forever waive and agree never to assert any and all Moral Rights I may have in or with respect to any Invention, even after termination of my work on behalf of the Company. "Moral Rights" mean any rights to claim authorship of an Invention to object to or prevent the modification of any Invention, or to withdraw from circulation or control the publication or distribution of any Invention, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right".

8. **Assistance.** I agree to assist the Company in every proper way to obtain for the Company and enforce patents, copyrights, mask work rights, trade secret rights and other legal protections for the Company's Inventions in any and all countries. I will execute any documents that the Company may reasonably request for use in obtaining or enforcing such patents, copyrights, mask work rights, trade secrets and other legal protections. My obligations under this paragraph will continue beyond the termination of my employment with the Company, provided that the Company will compensate me at a reasonable rate after such termination for time or expenses actually spent by me at the Company's request on such assistance. I appoint the Secretary of the Company as my attorney-in-fact to execute documents on my behalf for this purpose.

9. **Proprietary Information.** I understand that my employment by the Company creates a relationship of confidence and trust with respect to any information of a confidential or secret nature that may be disclosed to me by the Company that relates to the business of the Company or to the business of any parent, subsidiary, affiliate, customer or supplier of the Company or any other party with whom the Company agrees to hold information of such party in confidence ("proprietary Information"). Such Proprietary Information includes but is not limited to Inventions, marketing plans, product plans, business strategies, financial information, forecasts, personnel information and customer lists.

10. **Confidentiality.** At all times, both during my employment and after its termination, I will keep and hold all such Proprietary Information in strict confidence and trust, and I will not use or disclose any of such Proprietary Information without the prior written consent of the Company, except as may be necessary to perform my duties as an employee of the Company for the

benefit of the Company. Upon termination of my employment with the Company, I will promptly deliver to the Company all documents and materials of any nature pertaining to my work with the Company and I will not take with me any documents or materials or copies thereof containing any Proprietary Information.

11. **No Breach of Prior Agreement.** I represent that my performance of all the terms of this Agreement and my duties as an employee of the Company will not breach any invention assignment, proprietary information or similar agreement with any former employer or other party. I represent that I will not bring with me to the Company or use in the performance of my duties for the Company any documents or materials of a former employer that are not generally available to the public or have not been legally transferred to the Company.

12 **Other Agreements.**

a. I understand that my employment with the Company requires my undivided attention and effort. As a result, during my employment, I will not, without the Company's express written consent, engage in any employment or business other than for the Company, or invest in or assist in any manner any business which directly or indirectly competes with the business or future business plans of the Company.

b. Employee agrees that information regarding all elements of personal compensation is considered by Company to be personal and confidential and is not to be disclosed to or discussed with any other Company employees with the exception of Employee's direct manager and/or officers of Company. Inappropriate disclosure of such information will be treated as a breach of Proprietary Information.

c. Employee agrees to adhere to policies and procedures as defined by Company. Company reserves the right to delete, modify or otherwise amend any such policies and procedures in its sole discretion at any time without notice.

d. Employee hereby authorizes Company to notify others, including but not limited customers of Company and Employee's future employers, of the terms of this Agreement and Employee's responsibilities hereunder.

e. All facts concerning Employee's background, education, experience and employment history submitted to Company are true and correct.

13. **Employee's Innovations.** Employee may, upon submission of all relevant facts in writing, request a written statement from his or her manager which will serve to formally acknowledge that Company has no right, title or interest in Employees Innovations that (i) are developed entirely on Employee's own time, (ii) are developed using equipment, supplies, facilities or trade secrets not belonging to Company, (iii) result from work not performed by Employee for Company and (iv) relate at the time of conception or reduction to practice to no business or actual or demonstrably anticipated research or development of Company. In order to be operative and effective, such written waiver must be signed by Employee's manager and Company's legal counsel, if they each believe that such waiver is appropriate under the terms of this Agreement, and a copy will be placed in Employee's personnel file with an original copy to be retained by Employee.

14. **Notification.** I hereby authorize the Company to notify my actual or future employers of the terms of this Agreement and my responsibilities hereunder.

15. **Non-Solicitation.** During, and for a period of one (1) year after termination of, my employment with the Company, I will (a) not directly or indirectly solicit or take away suppliers, customers, employees, consultants or clients of the Company for my own benefit or for the benefit of

any other party, and (b) notify Company in the event I become an employee of any client of the Company.

16. **Certain Obligations Upon Termination of Employment.** On termination of this Agreement by either Company or Employee, Employee will promptly deliver to Company any and all computer hardware, documents, diskettes, materials, and other property of any kind pertaining to his or her employment, including without limitation any Proprietary Information and/or any Innovations. Employee will not make or retain any copies or abstracts of any of the above materials.

17. **Name and Likeness Rights, Etc.** I hereby authorize the Company to use, reuse, and to grant others the right to use and reuse, my name, photograph, likeness (including caricature), voice, and biographical information, and any reproduction or simulation thereof, in any media now known or hereafter developed (including but not limited to film, video and digital or other electronic media), both during and after my employment, for whatever purposes the Company deems necessary.

18. **Injunctive Relief.** I understand that in the event of a breach or threatened breach of this Agreement by me the Company may suffer irreparable harm and will therefore be entitled to injunctive relief to enforce this Agreement.

19. **Governing Law: Severability.** This Agreement will be governed and interpreted in accordance with the internal laws of the State of California, without regard to or application of choice of law, rules or principles. In the event that any provision of this Agreement is found by a court, arbitrator or other tribunal to be illegal, invalid or unenforceable, then such provision shall not be voided, but shall be enforced to the maximum extent permissible under applicable law, and the remainder of this Agreement shall remain in full force and effect.

20. **No Duty to Employ.** I understand that this Agreement does not constitute a contract of employment or obligate the Company to employ me for any stated period of time. This Agreement shall be effective as of the first day of my employment with the Company, namely: June 1, 2000.

21. **Miscellaneous.**

a. This Agreement states the entire agreement of the parties and supersedes all prior agreements, communications and understandings relating to the subject matter hereof. Neither party has entered into this Agreement by reason of or in reliance on any representations of fact or opinion which are not fully stated herein.

b. No waiver, amendment, or modification of any provision of this Agreement will be effective unless in writing and signed by the party against whom its enforcement is sought. No failure or delay by either party in exercising any right or remedy under this Agreement will operate as a waiver.

Metabyte Networks, Inc.

By: Manu Mehta

Name: Manu Mehta

Title: President

Employee:

Isaac Bentolik
Signature

Isaac Bentolik
Name (Please print)

LAW OFFICES OF
SHERMAN & SHERMAN
A PROFESSIONAL CORPORATION
ONE CENTURY PLAZA
2029 CENTURY PARK EAST
SEVENTEENTH FLOOR
LOS ANGELES, CALIFORNIA 90067
TELEPHONE (310) 789-3200
FACSIMILE (310) 789-3210

April 1, 2002

VIA UPS

Isaac (Ariel) Bentolila
517 36th Avenue, Apt. 201
San Francisco, California 94121

Re: U.S. Patent Application for:
"SYSTEM, METHOD, AND SOFTWARE APPLICATION FOR
TARGETED ADVERTISING VIA BEHAVIORAL MODEL CLUSTERING,
AND PREFERENCE ...
Serial No.: 10/043,714
Filed: January 9, 2002
Our Reference No.: MET1.00025

Dear Mr. Bentolila:

Per your request, enclosed please find a copy of the above-referenced application as filed with the United States Patent and Trademark Office on January 9, 2002.

Please review this application and have the attached Assignment for Patent Application and Combined Declaration and Power of Attorney executed and returned to our offices.

If you have any questions or comments, please do not hesitate to contact us.

Sincerely yours,

SHERMAN & SHERMAN


Kenneth L. Sherman

/eem

Enclosures

cc: Carmen M. Garrett
Sandy Ettinger

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JUL 3 1 2002

OFFICE OF PETITIONS

Appln. Serial No.	Filing Date	Status (patented, pending, abandoned)
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SHERMAN & SHERMAN

ATTORNEYS AT LAW

DOCKET NO. MET1.0025

PATENT APPLICATION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I/(We) hereby appoint the following attorneys to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith: KENNETH L. SHERMAN, Registration No. 33,783; MICHAEL ZARRABIAN, Registration No. 39,886; and MILORD KESHISHZADEH, Registration No. 43,333 of

SHERMAN & SHERMAN, A.P.C.
2029 Century Park East
Seventeenth Floor
Los Angeles, California 90067
Tel: (310) 789-3200

with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith, and all future telephone calls and correspondence should be directed and/or addressed to Kenneth L. Sherman, Sherman & Sherman.

Full name of sole or first inventor: Isaac Bentolila

Inventor's signature: _____ Date: _____
Residence: 517 36th Avenue, Apt. 201, San Francisco, California 94121
Citizenship: Israel
Post Office Address: Same as above

Full name of sole or second inventor: Yiming Zhou

Inventor's signature: _____ Date: _____
Residence: 4800 La Habra St., Union City, California 94587
Citizenship: British
Post Office Address: Same as above

Full name of sole or third inventor: Labeeb Ismail

Inventor's signature: _____ Date: _____
Residence: 1369 Hyde Street #35, San Francisco, California 94109
Citizenship: Indian
Post Office Address: Same as above

Full name of sole or fourth inventor: Richard Humpleman

Inventor's signature: _____ Date: _____
Residence: 343 Lower Vintners Circle, Fremont, California 94539
Citizenship: British
Post Office Address: Same as above

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on _____.

(Type or print name of person mailing paper)

(Signature of person mailing paper)

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PATENT

Docket No. MET1.0025

ASSIGNMENT OF APPLICATION FOR PATENT

WHEREAS:

ISAAC BENTOLILA, 517 36th Avenue, Apt. 201, San Francisco, CALIFORNIA 94121

YIMING ZHOU, 4800 LA HABRA ST., UNION CITY, CALIFORNIA 94587

LABEEB ISMAIL, 1369 HYDE STREET #35, SAN FRANCISCO, CALIFORNIA 94109

RICHARD HUMPLEMAN, 343 LOWER VINTNERS CIRCLE, FREMONT, CALIFORNIA 94539

(full name(s) and post office address(s) of inventor(s) (including country))

(hereinafter referred to as ASSIGNOR(S)), has made a discovery or invention entitled:

SYSTEM, METHOD, AND SOFTWARE APPLICATION FOR
TARGETED ADVERTISING VIA BEHAVIORAL MODEL CLUSTERING, AND
PREFERENCE PROGRAMMING BASED ON BEHAVIORAL MODEL CLUSTER
(title of discovery or invention)

- [] for which application for Letters Patent of the United States has been executed on even date herewith,
- [X] for which application for Letters Patent of the United States has been filed on January 9, 2002, under Serial No. 10/043,714, and

WHEREAS:

METABYTE NETWORKS, INC. 39350 CIVIC CENTER DRIVE, SUITE 100, FREMONT, CALIFORNIA 94538

(name and address of assignee)

(hereinafter referred to as ASSIGNEE)), is desirous of acquiring the entire interest in, to and under said invention and in, to and under Letters Patent or similar legal protection to be obtained therefor in the United States and in any and all foreign countries.

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN:

Be it known that in consideration of the payment by ASSIGNEE to ASSIGNOR(S) of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, and for other good and valuable

consideration, ASSIGNOR(S) hereby sells, assigns and transfers to ASSIGNEE, its successors, legal representatives and assigns, the full and exclusive right, title and interest to said discovery or invention in the United States and its territorial possessions and in all foreign countries to be obtained for said invention by said application or any continuation, division, renewal, substitute or reissue thereof or any legal equivalent thereof in a foreign country for the full term or terms for which the same may be granted.

I, SAID ASSIGNOR(S), hereby authorize and request the Commissioner of Patents and Trademarks of the United States of America whose duty it is to issue Letters Patent on applications as aforesaid, to issue all such Letters Patent for said discovery or invention to the ASSIGNEE, as assignee of the entire right, title and interest in, to an under the same, for the sole use and behalf of the ASSIGNEE, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

I, SAID, ASSIGNOR(S), hereby covenant that I have full right to convey the entire right, title and interest herein sold, assigned, transferred and set over;

AND I, SAID ASSIGNOR(S) hereby further covenant and agree that the ASSIGNEE, its successors, legal representatives, or assigns, may apply for foreign Letters Patent on said discovery or invention and claim the benefits of the International Convention, and that I will, at any time, when called upon to do so by the ASSIGNEE, its successors, legal representatives, or assigns, communicate to the ASSIGNEE, its successors, legal representatives, or assigns, as the case may be, any facts known to me respecting said discovery or invention, and execute and deliver any and all lawful papers that may be necessary or desirable to perfect the title to the said discovery or invention, the said applications and the said Letters Patent in the ASSIGNEE, its successors, legal representatives and assigns, and that if reissues of the said Letters Patent or disclaimers relating thereto, or divisions, continuations, or refilings of the said applications, or any thereof, shall hereafter be desired by the ASSIGNEE, its successors, legal representatives,

Docket No. MET1.0025

or assigns, I will, at any time, when called upon to do so by the ASSIGNEE its successors, legal representatives, or assigns, sign all lawful papers, make all rightful oaths, execute and deliver all such disclaimers and all divisional, continuation and reissue applications so desired, and do all lawful acts requisite for the application for such reissues and the procuring thereof and for the filing of such disclaimers and such applications, and generally do everything possible to aid the ASSIGNEE, its successors, legal representatives and assigns, to obtain and enforce proper patent protection for said invention or discovery in all countries, all without further compensation but at the expense of the ASSIGNEE, its successors, legal representatives and assigns.

Assignor's signature: _____
ISAAC BENTOLILA

Dated: _____

Citizenship: _____

Assignor's signature: _____
YIMING ZHOU

Dated: _____

Citizenship: _____

Assignor's signature: _____
LABEEB ISMAIL

Dated: _____

Citizenship: _____

Assignor's signature: _____
RICHARD HUMPLEMAN

Dated: _____

Citizenship: _____

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service first class mail in an envelope addressed to the: Assistant Commissioner for Patents, Washington, D.C. 20231 on _____.

(Type or print name of person mailing paper)

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(Signature of person mailing paper)



United Parcel Service

Delivery Service Invoice

Invoice date **April 6, 2002**
Invoice number **0000FR2808142**
Shipper number **FR2808**
Page 3 of 3

Outbound

Air Shipping Document

Pickup Date	Tracking Number	Service	ZIP Code	Zone	Weight	Published Charge	Incentive Credit	Billed Charge
04/01	1ZFR28082210004340	Next Day Air Commercial	94538	104	Letter	14.75	-2.00	12.75
		Fuel Surcharge				0.07	-0.01	0.06
		Total				14.82	-2.01	12.81
	1st ref: METI.0003							
	Sender: KENNETH SHERMAN ESQ		Receiver: RICHARD HUMPLEMAN					
	SHERMAN AND SHERMAN		METABYTE NETWORKS IN					
	LOS ANGELES CA 90067		FREMONT CA 94538					
	1ZFR28082210004377	Next Day Air Commercial	94121	104	Letter	14.75	-2.00	12.75
		Fuel Surcharge				0.07	-0.01	0.06
		Total				14.82	-2.01	12.81
	1st ref: METI 0025							
	Sender: K L SHERMAN ESQ		Receiver: I ARIEL BENTOLILA					
	SHERMAN AND SHERMAN		SAN FRANCISCO CA 94121					
	LOS ANGELES CA 90067							
	1ZFR28082210004386	Next Day Air Commercial	72716	106	Letter	15.25	-2.00	13.25
		Fuel Surcharge				0.08	-0.01	0.07
		Total				15.33	-2.01	13.32
	1st ref: LARI.0014							
	Sender: K L SHERMAN ESQ		Receiver: JOLINN DEASON					
	SHERMAN AND SHERMAN		WALMERT STORES INC L					
	LOS ANGELES CA 90067		BENTONVILLE AR 72716-8095					
04/03	1ZFR28082210004368	Next Day Air Commercial	29601	108	Letter	16.50	-2.00	14.50
		Fuel Surcharge				0.08	-0.01	0.07
		Total				16.58	-2.01	14.57
	1st ref: LARI.0005/0014							
	Sender: KENNETH L SHERMAN		Receiver: CORT FLINT					
	SHERMAN AND SHERMAN		MCNAIR LAW FIRM P A					
	LOS ANGELES CA 90067		GREENVILLE SC 29601					
Total Air Shipping Document			4 Package(s)			61.55	-8.04	53.51

Worldwide Service

Pickup Date	Tracking Number	Service	ZIP Code	Zone	Weight	Published Charge	Incentive Credit	Billed Charge
03/28	46503489830	Worldwide Express	IP03	901	Letter	29.50	-5.90	23.60
		Fuel Surcharge				0.15	-0.03	0.12
		Total				29.65	-5.93	23.72
	1st ref: CELI0016-UK							
	Sender: MR KENNETH SHERMAN		Receiver: MS ABBIE FORDHAM					
	SHERMAN & SHERMAN		GP ACCUSTICS (U.K.) LTD					
	2029 CENTURY PARK EAST		FOXHALL ROAD					
	LOS ANGELES CA 90067		IPSWICH IP03					
			GB					
Total Worldwide Service			1	Package(s)		29.65	-5.93	23.72
Total Outbound			5	Package(s)		91.20	-13.97	77.23



UPS Next Day Air
UPS Worldwide Express
Shipping Document

See instructions on back. Call 1-800-PICK-UPS (800-742-5877) for additional information.

TRACKING NUMBER 1ZFR2 808 22 1000 437 7

SHIPMENT FROM
SHIPPER'S UPS ACCOUNT NO. **FR2808**

REFERENCE NUMBER

ME11.0025

NAME **Kenneth L. Sherman Esq.** TELEPHONE
COMPANY **SHERMAN & SHERMAN**

STREET ADDRESS
2029 CENTURY PARK EAST RM 1700

CITY AND STATE **LOS ANGELES CA** ZIP CODE **90067-2901**

2 EXTREMELY URGENT DELIVERY TO

NAME **Isaac (Aric) Benaville** TELEPHONE
COMPANY

STREET ADDRESS

517 36th Avenue Apt. 201 DEPT./FLR. **201** Residential
CITY AND STATE (INCLUDE COUNTRY IF INTERNATIONAL) **San Francisco CA**



3 WEIGHT
ENTER "L" IF LETTER
IF LETTER
WEIGHT
DIMENSIONAL WEIGHT
IF APPLICABLE

SHIPPER'S 1
COPY

4 TYPE OF SERVICE
☒ NEXT DAY AIR
☐ EXPRESS (INTL)
CHARGES

5 OPTIONAL SERVICES
☐ INSURED VALUE
Mark an "X" in the box if shipment only contains documents of no commercial value.
See instructions.
Amount \$

6 ADDITIONAL HANDLING CHARGE
☐ COD
An additional handling charge applies for certain items. See instructions.
Amount \$

7 BILL TO SHIPPER
☒ BILL TO THIRD PARTY
SHIPPER'S ACCOUNT NO. IN SECTION 8
AMOUNT \$

8 RECEIVERS / THIRD PARTY'S UPS ACCT. NO. OR MAJOR CREDIT CARD NO.
THIRD PARTY'S COMPANY NAME
STREET ADDRESS
CITY AND STATE
ZIP CODE

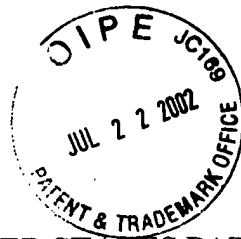
9 SHIPPER'S SIGNATURE
X
DATE OF SHIPMENT
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JUL 3 1 2002

OFFICE OF PETITIONS



MET1.0025

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bentolila, et al.)
)
For: SYSTEM, METHOD, AND SOFTWARE)
APPLICATION FOR TARGETED)
ADVERTISING VIA BEHAVIORAL)
MODEL CLUSTERING, AND)
PREFERENCE PROGRAMMING BASED)
ON BEHAVIORAL MODEL CLUSTER)
)
Application No.: 10/043,714)
) July 15, 2002
Filed: January 9, 2002)
)
_____) Los Angeles, California 90067

DECLARATION OF CARMEN GARRETT AND
STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF
NON-SIGNING INVENTOR UNDER 37 CFR 1.47(a)

Assistant Commissioner for Patents
Washington, D.C. 20231

I, Carmen Garrett hereby declare that the following is true and correct, and if called upon
could and would testify to the following:

1. I am a resident in the State of California.
2. I am the Contract Coordinator and Executive Assistant at Metabyte Networks, Inc.
(hereinafter "MNI"), the owner by agreement of all rights, title and interest to the above-
referenced United States Patent Application.

3. MNI is a Delaware Corporation, licensed to do business in the State of California and having its principal place of business at 39350 Civic Center Drive, Suite 200, Fremont, California 94538.

4. On behalf of MNI, I communicated on several occasions with Mr. Ariel (Isaac) Bentolila, an inventor in this application and I have been unsuccessful in obtaining his signature on the Declaration for this United States Patent Application.

5. Mr. Bentolila was an employee of MNI when he participated in the invention claimed by this U.S. patent application, but is not longer an employee of MNI.

6. While an employee of MNI, Mr. Bentolila had a duty to assign all rights, title and interest in his inventions to MNI. A true copy of Mr. Bentolila's "Employee Invention Assignment and Confidentiality Agreement with Metabyte Networks, Inc. is attached hereto as Exhibit A.

7. On March 29, 2002, I forwarded a federal express package to Mr. Bentolila containing copies of the Declaration and Power of Attorney and Assignment for his review and execution. A copy of the Federal Express Invoice and the Detailed Results slip is attached as Exhibit B.

8. Since that date, I have telephonically communicated with Mr. Bentolila several times. His telephone number is (415) 876-0735. While Mr. Bentolila had previously advised me

that he will execute the documents, he did not wish to be burdened with any set time frame for deadlines. At this time, he refuses to execute the Declaration.

9. The other joint inventors have executed a Declaration complying with 37 CFR 1.63 and 37 CFR 1.47(a). Therefore, Applicant hereby requests that the Patent Office accept the filing of a partially executed Declaration and Power of Attorney under 37 CFR 1.47(a) with no further delay in the examination and issuance of this patent application.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and submit this Statement on behalf of Metabyte Networks, Inc.

Dated: 7/15/02

Cy Garrett
Carmen M. Garrett
Contract Coordinator and Executive Assistant
Metabyte Networks, Inc.

CERTIFICATE OF MAILING
I hereby certify that this correspondence is being deposited with the United States Postal Service first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 on July 15, 2002
(Type or print name of person mailing paper) William Musyvan
G:\KLS\NET1\MRT1.0025\CarmenDec.712 (Signature of person mailing paper) [Signature]

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COPY

METABYTE NETWORKS, INC.

12-2-81/11c

EMPLOYEE INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT

In consideration of, and as a condition of my employment with Metabyte Networks, Inc., a California corporation (the "*Company*"), I hereby represent to, and agree with the Company as follows:

1. **Purpose of Agreement.** Employee understands that the Company is engaged in a continuous program of research, development, production and marketing in connection with its business and that it is critical for the Company to preserve and protect its Proprietary Information (as defined below), its rights in Inventions and in all related intellectual property rights. Accordingly, I am entering into this Agreement as a condition of my employment with the Company, whether or not I am expected to create inventions of value for the Company.
2. **Employment at Will.** Employee understands and agrees that this Agreement does not constitute a contract of employment or obligate Company to employ Employee for any stated or fixed period of time. Employee understands and agrees that Employee's employment with Company is at will, and may be terminated by Company or Employee at any time and for any reason or for no reason, with or without cause.
3. **Disclosure of Inventions.** I will promptly disclose in confidence to the Company all inventions, improvements, designs, original works of authorship, formulas, processes, compositions of matter, computer software programs, databases, mask works and trade secrets ("Inventions") that I make or conceive or first reduce to practice or create, either alone or jointly with others, during the period of my employment, whether or not in the course of my employment, and whether or not such Inventions are patentable, copyrightable or protectible as trade secrets.
4. **Reimbursement.**
 - a. Under this Agreement, Employee will be reimbursed for any expenses incurred provided that such reimbursement is authorized under Company's prevailing policies.
 - b. Employee may participate in Company's employee benefit programs to the extent that the same are open to other employees in similar Company positions. Company reserves the right to delete, modify, or otherwise amend any of such programs and eligibility requirements for the same in its sole discretion.
 - c. Authority. Employee understands and agrees that he or she has no authority, express or implied, to enter into any obligation or responsibility on Company's behalf without, in each instance, obtaining the prior written authority of an officer of Company to do so.
5. **Work for Hire; Assignment of Inventions.** I acknowledge and agree that any copyrightable works prepared by me within the scope of my employment are "works for hire" under the Copyright Act and that the Company will be considered the author and owner of such copyrightable works. I agree that all Inventions that (a) are developed using equipment, supplies, facilities or trade secrets of the Company, (b) result from work performed by me for the Company, or (c) relate to the Company's business or current or anticipated research and development, will be the sole and exclusive property of the Company and are hereby irrevocably assigned by me to the Company.

6. **Labor Code 2870 Notice.** I have been notified and understand that the provisions of paragraphs 3 and 5 of this Agreement do not apply to any Invention that qualifies fully under the provisions of Section 2870 of the California Labor Code, which states as follows:

ANY PROVISION IN AN EMPLOYMENT AGREEMENT WHICH PROVIDES THAT AN EMPLOYEE SHALL ASSIGN, OR OFFER TO ASSIGN, ANY OF HIS OR HER RIGHTS IN AN INVENTION TO HIS OR HER EMPLOYER SHALL NOT APPLY TO AN INVENTION THAT THE EMPLOYEE DEVELOPED ENTIRELY ON HIS OR HER OWN TIME WITHOUT USING THE EMPLOYER'S EQUIPMENT, SUPPLIES, FACILITIES, OR TRADE SECRET INFORMATION EXCEPT FOR THOSE INVENTIONS THAT EITHER: (1) RELATE AT THE TIME OF CONCEPTION OR REDUCTION TO PRACTICE OF THE INVENTION TO THE EMPLOYER'S BUSINESS, OR ACTUALLY OR DEMONSTRABLY ANTICIPATED RESEARCH OR DEVELOPMENT OF THE EMPLOYER, OR (2) RESULT FROM ANY WORK PERFORMED BY THE EMPLOYEE FOR THE EMPLOYER. TO THE EXTENT A PROVISION IN AN EMPLOYMENT AGREEMENT PURPORTS TO REQUIRE AN EMPLOYEE TO ASSIGN AN INVENTION OTHERWISE EXCLUDED FROM BEING REQUIRED TO BE ASSIGNED UNDER CALIFORNIA LABOR CODE SECTION 2870(a), THE PROVISION IS AGAINST THE PUBLIC POLICY OF THIS STATE AND IS UNENFORCEABLE.

7. **Assignment of Other Rights.** In addition to the foregoing assignment of Inventions to the Company, I hereby irrevocably transfer and assign to the Company: (a) all worldwide patents, patent applications, copyrights, mask works, trade secrets and other intellectual property rights in any Invention; and (b) any and all "Moral Rights" (as defined below) that I may have in or with respect to any Invention. I also hereby forever waive and agree never to assert any and all Moral Rights I may have in or with respect to any Invention, even after termination of my work on behalf of the Company. "Moral Rights" mean any rights to claim authorship of an Invention to object to or prevent the modification of any Invention, or to withdraw from circulation or control the publication or distribution of any Invention, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right".

8. **Assistance.** I agree to assist the Company in every proper way to obtain for the Company and enforce patents, copyrights, mask work rights, trade secret rights and other legal protections for the Company's Inventions in any and all countries. I will execute any documents that the Company may reasonably request for use in obtaining or enforcing such patents, copyrights, mask work rights, trade secrets and other legal protections. My obligations under this paragraph will continue beyond the termination of my employment with the Company, provided that the Company will compensate me at a reasonable rate after such termination for time or expenses actually spent by me at the Company's request on such assistance. I appoint the Secretary of the Company as my attorney-in-fact to execute documents on my behalf for this purpose.

9. **Proprietary Information.** I understand that my employment by the Company creates a relationship of confidence and trust with respect to any information of a confidential or secret nature that may be disclosed to me by the Company that relates to the business of the Company or to the business of any parent, subsidiary, affiliate, customer or supplier of the Company or any other party with whom the Company agrees to hold information of such party in confidence ("proprietary Information"). Such Proprietary Information includes but is not limited to Inventions, marketing plans, product plans, business strategies, financial information, forecasts, personnel information and customer lists.

10. **Confidentiality.** At all times, both during my employment and after its termination, I will keep and hold all such Proprietary Information in strict confidence and trust, and I will not use or disclose any of such Proprietary Information without the prior written consent of the Company, except as may be necessary to perform my duties as an employee of the Company for the

benefit of the Company. Upon termination of my employment with the Company, I will promptly deliver to the Company all documents and materials of any nature pertaining to my work with the Company and I will not take with me any documents or materials or copies thereof containing any Proprietary Information.

11. **No Breach of Prior Agreement.** I represent that my performance of all the terms of this Agreement and my duties as an employee of the Company will not breach any invention assignment, proprietary information or similar agreement with any former employer or other party. I represent that I will not bring with me to the Company or use in the performance of my duties for the Company any documents or materials of a former employer that are not generally available to the public or have not been legally transferred to the Company.

12 **Other Agreements.**

a. I understand that my employment with the Company requires my undivided attention and effort. As a result, during my employment, I will not, without the Company's express written consent, engage in any employment or business other than for the Company, or invest in or assist in any manner any business which directly or indirectly competes with the business or future business plans of the Company.

b. Employee agrees that information regarding all elements of personal compensation is considered by Company to be personal and confidential and is not to be disclosed to or discussed with any other Company employees with the exception of Employee's direct manager and/or officers of Company. Inappropriate disclosure of such information will be treated as a breach of Proprietary Information.

c. Employee agrees to adhere to policies and procedures as defined by Company. Company reserves the right to delete, modify or otherwise amend any such policies and procedures in its sole discretion at any time without notice.

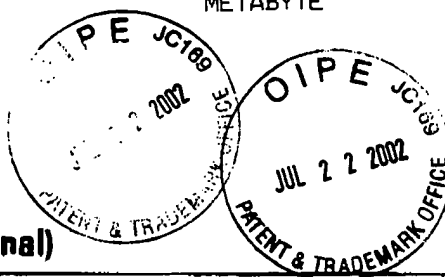
d. Employee hereby authorizes Company to notify others, including but not limited customers of Company and Employee's future employers, of the terms of this Agreement and Employee's responsibilities hereunder.

e. All facts concerning Employee's background, education, experience and employment history submitted to Company are true and correct.

13. **Employee's Innovations.** Employee may, upon submission of all relevant facts in writing, request a written statement from his or her manager which will serve to formally acknowledge that Company has no right, title or interest in Employees Innovations that (i) are developed entirely on Employee's own time, (ii) are developed using equipment, supplies, facilities or trade secrets not belonging to Company, (iii) result from work not performed by Employee for Company and (iv) relate at the time of conception or reduction to practice to no business or actual or demonstrably anticipated research or development of Company. In order to be operative and effective, such written waiver must be signed by Employee's manager and Company's legal counsel, if they each believe that such waiver is appropriate under the terms of this Agreement, and a copy will be placed in Employee's personnel file with an original copy to be retained by Employee.

14. **Notification.** I hereby authorize the Company to notify my actual or future employers of the terms of this Agreement and my responsibilities hereunder.

15. **Non-Solicitation.** During, and for a period of one (1) year after termination of, my employment with the Company, I will (a) not directly or indirectly solicit or take away suppliers, customers, employees, consultants or clients of the Company for my own benefit or for the benefit of



Invoice Number: 4-163-63818

Invoice Date: Apr 05, 2002

Account Number: 2552-4511-2

Page: 3 of 3

FedEx Express Payment Type Detail (Original)

Dropped off: Mar 26, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

FedEx Internal Use: 088281900/00200/_/_

- Fuel Surcharge - FedEx has applied a fuel surcharge of 0.50% to this shipment.
- Distance Based Pricing, Zone 2

Tracking ID 829198582246
 Service Type FedEx Standard Overnight
 Package Type FedEx Envelope
 Zone 2
 Pieces 1
 Weight 1.0 lbs, 0.5 kgs
 Delivered Mar 27, 2002 10:24
 Service
 Area Code A1
 Signed by BENTOLILA
 Bundle ID 000

Sender
 CARMEN GARRETT
 METABYTE NETWORK INC
 39350 CIVIC CENTER DR STE 200
 FREMONT CA 94538-2331 US

Recipient
 ISAAC BENTOLELA
 517 38TH AVE APT 201
 SAN FRANCISCO CA 94121 US

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Transportation Charge	11.25
Discount	-0.90
Fuel Surcharge	0.05
Residential Delivery	1.35
Total Transportation Charges	USD \$ 11.75

(MET1.0025)

Dropped off: Mar 29, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

FedEx Internal Use: 092140580/07171/_/02

- Fuel Surcharge - FedEx has applied a fuel surcharge of 0.50% to this shipment.
- The delivery commitment for Express Saver Packages to homes or private residences (including home offices) is 7PM the third business day for all regions.
- Distance Based Pricing, Zone 4
- Release signature on file.

Tracking ID 829198582187
 Service Type FedEx Express Saver
 Package Type FedEx Pak
 Zone 4
 Pieces 1
 Weight 1.0 lbs, 0.5 kgs
 Delivered Apr 01, 2002 11:12
 Service
 Area Code 3R
 Signed by V. JOTHILINGAM
 Bundle ID 000

Sender
 VALLAL JOTHILINGAM
 METABYTE NETWORK INC
 39350 CIVIC CENTER DR STE 200
 FREMONT CA 94538-2331 US

Recipient
 VINOD JOTHILINGAM
 SCRIPPS LANDING APARTMENTS
 9858 ERMA RD APT 15
 SAN DIEGO CA 92131 US

Transportation Charge	7.85
Discount	-0.39
Fuel Surcharge	0.04
Residential Delivery	1.35
Total Transportation Charges	USD \$ 8.85

Payment Type Detail Subtotal **USD \$ 20.60**

FedEx Express | Tracking | Results Detail

Page 1 of 1

Track Shipments
Detailed Results**Tracking Number** 829198582246**Reference Number****Ship Date** 03/26/2002**Delivered To****Delivery Location** SAN FRANCISCO CA**Delivery Date/Time** 03/27/2002 10:24**Signed For By** .BENTOLILA**Service Type** Standard Letter**Tracking Options**

- Obtain a Signature Proof of Delivery
- Email these tracking results to one or more recipients
- Track More Shipments

Scan Activity

DeliveredSAN FRANCISCO CA

Date/Time

03/27/2002 10:24

Comments**COPY OF PAPERS -
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